CERTAINE PROPOSALS FOR Regulating the Law,

to make the same more plaine and easie to bee understood, and lesse Chargeable and expensive then heretofore.

By John Shepheard.

First, I take for an undeniable principle, that the Law which so much concernes every man, ought not to bee a Mysterie, but as much as possible be made most prospicuous and evident to the meaneſt capacitie, nothing being more unjust then for a man to be judged by a law of which hee was unavoydably ignorant. For if wee consider the rise and originall of all Lawes, because men knew not when they did well, when they did evill, what was theirs what not theirs; they instituted Lawes to the end every man might know his Duty and the penalty of transgressing. Moreover, it is a maxime in our own Law, that ignorance thereof excuseth no man, but every man is presumed to bee

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conuſant thereof. And it is a true ſaying, *Miſera eſt ſervitus ubi jus eſt vagum aut incognitum*, It is a miſerable ſlavery where the Law is incertain or unknowne; a wonder it was to all wiſe men even to the ingenuous of the Profeſſors of the Law themſelves, that the Law ſhould bee kept ſo cloſe lockt up in an unknowne tongue, when the reaſon why the Lawes were firſt written in that brackiſh *French*, was becauſe that Language was then beſt underſtood of thoſe whom thoſe lawes moſt concern'd (*viz.*) the *Normans*.

Therefore bleſſed be God, it hath been and ſtill is the Wiſdome and Integritie of the PARLIAMENT, to make the Lawes ſo plain and obvious to every underſtanding, that every man might know his duty and his property.

The Lawes of this Land are eyther Criminall or Civill; as for the criminall Lawes they are not ſo many or myſterious, but with a little ſtudy a man may attaine to a competent knowledge thereof; but for the Civill lawes, eſpecially thoſe which concerne Lands, they are infinitly Intricate, myſticall, and expenſive. Now becauſe when a Diſeaſe is knowne it is halfe cured, that which I conceive is the cauſe thereof, is multiplicity and diverſity of Tenures, and Conveyances, together with the ſecret and clandeſtine making of Conveyances. There are not ſo little as Ten ſeverall wayes whereby men may convey eſtates of Inheritance, upon every of which depends ſuch innumerable quirkes and intricacies, all of them having ſeverall operations, that men which make it their whole ſtudies all their lives long, can hardly if at all come to ſome reaſonable knowledge thereof.

Now

Now that which I propoſe for the Remedy of this evill is —

1.

That all Eſtates of Inheritances as well Free-hold as Copy-hold, might bee but of one Tenure, to wit, Fee-ſimple. Entailes, my L. *Cooke* being Judge, having ſo fetter'd and intangled mens Eſtates, that infinite are the controverſies which do ariſe thereupon. And to the end no man might be a looſer hereby nor any mans Property deſtroyed, certain Commiſſioners not of the ſame County might be authoriſed to Aſſigne and apportion to every Lord of Mannor, ſome part of the Tenancy in liew of his chief Rents, Heriots, and proquiſites of Courts, &c. in caſe the Lord and Tenant did not agree between themſelves.

2. That there might bee but one kind of Conveyance for all Eſtates of Inheritance (*viz.*) a Feofment in fee executed with Livery and Seiſin, or atturnment and inrolement in the proper County.

3. That every Leaſe longer then for Seven yeares, and all Wills that concerne Lands, ſhould be by writing to be inrolled likewiſe, as aforeſaid.

If this were done, I am perſwaded the Law —

1. Would be reduced into one conſiderable volume, which now a ſmall Library doth not containe; and there being but one Tenure and one kind of Conveyance, every man almoſt without Herculæan labour might attaine to ſome competent knowledge thereof. And I would gladly know, why there ſhould bee ſo many ſorts of Conveyances when one will ſerve the turne; unleſſe it be to make the Law more myſticall.

Fruſtra fit per plura quod fieri poſſit per pauciora.

2. The exceſſive expence and chargeable ceremonies of Fines and Recoveries, would be ſaved.

If in like manner all Conveyances were inrolled, then would there be plain dealing above-boord, the Common-wealth (1.) ſhould bee ſure of their Eſcheats and forfeitures upon any Treaſon committed or otherwiſe.

2. Purchaſers ſhould deale upon ſure grounds, and not purchaſe a multitude of ſuites and troubles, in ſtead of an eſtate.

3. Farmers ſhould be ſure of their bargaines, when they are ſure their Landlords have good eſtates.

4. Creditors ſhould be ſure of their Debts, whereas now men of very great eſtates in Lands, ſo convey and intangle them, that a Creditor can take no advantage againſt them.

5. Men upon Marriages of their Daughters ſhall be much more ſure of Joinctures; and in generall, in all Contracts and bargaines there would bee much more certainty, which is the mother of quiet and repoſe; whereas now who ſees not the innumerable controverſies doe ariſe upon ſecret and clandeſtine Conveyances: alſo what abundance of Suites are commenced upon ſuppoſition that they have right but cannot come to know the certainty because they can not come to ſight of Evidence. How many poore Widowes, Orphans, and others looſe their right by reaſon their Evidences are imbezeled. Theſe and many more miſchiefes would be remedied by inrolement of Conveyances in the County.

Now next of all let vs consider what may bee the Inconveniencies which may arise hereupon.

And first it may be objected, that for Copy-holds the alteration would bee very great; and that all Copie-holds passe by Surrender which doe amount to asmuch as the Inrolement mentioned.

For answer thereunto it is confessed, That Copie-hold Estates by reason thereof, are not lyable to fraudulent Conveyances, and therefore there doe not so many suites arise concerning Copie-holds as of Free-hold. Yet notwithstanding they being not extendible for Debts (which is a thing very unreasonable in my judgement, that a man should have any Estate not lyable to the payment of his Debts) but chiefly, because they retaine in them as yet more of Villenage and slavery, by reason of the arbitrary Fines, Herriots, Oathes, and suites of Court due to the Lord then is well consistent with the Freedome and liberty of *English-men*. And to the end the Law might bee the more easie and plaine to be understood, and all occasions of Controversies asmuch as possible might be removed. I suppose it best that as aforesaid, all Estates of Inheritance of Copie-hold might bee made free, and all lesser Estates made onely lyable to certaine Rents, as of Free hold lands.

2. It may bee objected, That it would be inconvenient to take away Entailes, whereby some would loose the benefit of Reversions after those estates ended. As to that, wee know every Tenant intayl at this day may at his pleasure make it Fee-simple. And for any thing else may bee sayd therein, my Lord *Cooke* in his first *Institutes fol.* 19. *b* shall answer for me in these words. (*When all Estates were Fee-simple, then were Purchasers sure of their Purshases, Farmers of their Leases, Creditors of their Debts, the King and Lords had their Escheates, Forfeitures Wardships and other profits of their Seigniories; and for these and for other like causes, by the wisdome of the* Common-law, *all Estates of inheritance were Fee-simple; and what Contentions and mischefes have crept into the quiet of the Law by these fettered Inheritances, daily*

Experience teacheth vs.) So that for this change there is a sufficient President, the ancient *Common-law* of this Land, and the advice of him who knew the Lawes of this land aswell as most that ever studied the same, (*viz.*) the Lord *Cooke*.

Then also concerning the Inrolments aforesaid, —

1. It may be objected, That a man cannot borrow money upon a Morgage without letting the Countrey know thereof; now as for that I conceive it no great matter, if hee that is rich bee so esteemed, and hee that is poore be so reputed.

2. But then the maine objection will bee, There be many Conveyances which if examined would be found defective, whereby Estates which have long continued in a Family might bee carried away to others. which in stead of ending Controversies would beget new.

For answer to which, that admit it were so, yet that would be but onely for the present, and after the first Suit it would be setled for Posterity. Moreover, it would but helpe those to possession to whom the Law had given most right.

But for remedy of such like Inconveniencies, was a profitable Statute made in the 21. yeare of King *James*, (*viz.*) That after 20. yeares quiet Possession, no action should bee commenced, unlesse in case of Infancie, Coverture, or the like; which Statute if it were inlarged and put in execution would salve that sore sufficiently.

The next Propositall for to remedy delayes in Suites, and to take away excessive Charge; is to take away Arrests in the beginning of suites. It would require a volume of it selfe to shew the excessive expence, the great delayes of Justice, the briberies and extortion by Sheriffes and Bayliffes, the batteries, barbarous cruelties, and many times Murthers, and many other inconveniencies which doe flow from this wicked fountaine of Arrests.

As for Example; a Noble-man or Great man, owes me 10, or 20.l. perhaps for wages or some other thing, for twice it may

may bee ten times my debt, J cannot get him arrested, and untill hee be arrested J can never so much as proceed in my suite; and if after disbursement of a great summe, J get him apprehended I shall have some five shillings allowed towards it by the Court. So if a man live in some Priviledged places, or rather which usurp such priviledges there they secure themselves, and bee their Estates never so great can by no meanes be layd hold on to pay their just debts. It would be too tedious to give instances of sculking wandring persons, and of some that secure themselves by the company of lewd and desperate fellows, that they can not be apprehended without abundance of charge and oftentimes danger of life; these Mischieses are so well knowne that I need not further set them forth. I appeale to many mens experience, whether if the arrest of divers persons would not cost them more then all the charges of Suite besides, nay and their proper Debts to boot; and how many yeares men may wait through the corruption of under-Sheriffs and their Bayliffes, before they can get a Debtor arrested, when if they were once taken the suite would come to Execution in three quarters of a yeare at most without much charge.

Now for remedy hereof, J suppose a sufficient Summons might serve turne well enough, and so in default of not Answering, the Plaintiffe upon proofe and evidence given might proceed to Judgement and Execution. For my owne part I confesse I see no satisfactory reason but that every man, aswell as Tradesmen, might bee brought within the Statute of *Bankrupts*. All that ever a Tradesman hath must be sold to pay his Debts; and why other meas Estates who are as justly indebted, as they, should not; in true reason I doe not understand. The Law seemes to me, too mild and remisse against the estates of Debtors, and against their persons as much too rigid and severe.

Another

Another Propoſall is, that Experience doth ſhew what very great delayes and intollerable charges ariſe, from being toſſed from Court to Court, (*viz.*) from *Chancery* to *Common-law*, and ſo back againe; nay, I am perſwaded that not one cauſe of tenne, eſpecially if of any conſequence, but firſt or laſt comes into the *Chancery* meerly for delayes; by which meanes peaceable minded men, will rather give away halfe their right then be troubled to ſue for it.

Now the remedy hereof, I ſuppoſe might bee to impower the Common-law Courts with equitable Jurisdiction, that the ſame Court might aſwell determine the Equity, as the Law of every caſe.

Another thing very neceſſary would bee, That the Act for reliefe of Debtors might extend to perſons which now are, or hereafter ſhall be Impriſoned.

Laſtly, it were to bee wiſhed, That the Committee *for the Regulating of the Law*, would procure ſome learned in the Lawes who might be well Fee'd for their paines, to argue and ſet forth before them the Inconveniencies on the one ſide with the profit, and commodity on the other which may ariſe on theſe or the like Alterations, their worke would be much more eaſie, and they themſelves the better able to ponder and judge what is fit to be done; it would not bee Time, labour, or money ill ſpent, to procure good and wholſome Lawes for our ſelves and Poſterity.

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